

1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF WASHINGTON AT SEATTLE

3  
4 FEDERAL TRADE COMMISSION, )  
STATE OF NEW YORK, STATE OF ) C23-01495-JHC  
5 CONNECTICUT, COMMONWEALTH OF ) SEATTLE, WASHINGTON  
PENNSYLVANIA, STATE OF )  
6 DELAWARE, STATE OF MAINE, ) October 17, 2023 -  
STATE OF MARYLAND, ) 3:00 p.m.  
7 COMMONWEALTH OF MASSACHUSETTS, )  
STATE OF MICHIGAN, STATE OF ) TELEPHONE CONFERENCE  
8 MINNESOTA, STATE OF NEVADA, )  
STATE OF NEW HAMPSHIRE, STATE )  
9 OF NEW JERSEY, STATE OF NEW )  
MEXICO, STATE OF OKLAHOMA, )  
10 STATE OF OREGON, STATE OF )  
RHODE ISLAND, and STATE OF )  
11 WISCONSIN, )  
12 Plaintiffs, )  
13 v. )  
14 AMAZON.COM, INC., a )  
corporation, )  
15 Defendant. )  
16 )

17 VERBATIM REPORT OF PROCEEDINGS  
18 BEFORE THE HONORABLE JOHN H. CHUN  
19 UNITED STATES DISTRICT JUDGE

20 APPEARANCES:

21 For the Plaintiff Edward H. Takashima  
FTC: Susan A. Musser  
22 Federal Trade Commission  
600 Pennsylvania Avenue N.W.  
23 Washington, DC 20580  
24 For the State of Timothy D. Smith  
Oregon and plaintiff Oregon Department of Justice  
25 states: 1162 Court St. N.E.  
Salem, OR 97301-4096

1 For the Defendant:

Heidi K. Hubbard  
Williams & Connolly  
680 Maine Avenue S.W.  
Washington, DC 20024

3 Molly A. Terwilliger  
4 Morgan Lewis & Bockius  
5 1301 Second Avenue  
6 Suite 2800  
7 Seattle, WA 98101  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 THE CLERK: Good afternoon, counsel. As we have  
2 everyone on the line who is speaking, we will go ahead and get  
3 started.

4 This is Case No. C23-1495, Federal Trade Commission, et al.  
5 versus Amazon.com, Inc.

6 Would counsel for the FTC, the State of Oregon, and then  
7 Amazon please make your appearances for the record?

8 MR. TAKASHIMA: Good afternoon, Your Honor. This is Ed  
9 Takashima from the FTC, and I have with me co-lead counsel, Susan  
10 Musser.

11 MR. SMITH: Good afternoon, Your Honor. Tim Smith from  
12 the Oregon Department of Justice appearing on behalf of the State  
13 of Oregon and the plaintiff states.

14 MS. HUBBARD: Good afternoon, Your Honor. Heidi Hubbard  
15 from Williams & Connolly. I will be speaking for Amazon today.  
16 And several of my co-counsel are also on the line.

17 THE COURT: Good afternoon, everyone. This is Judge  
18 Chun. Thank you for making yourselves available for this  
19 conference call. The reason why I called it is because I would  
20 like to disclose a relationship that I had with one of the  
21 lawyers in the case. The lawyer is Molly Terwilliger, and she is  
22 one of the local counsel for the defendant.

23 Ms. Terwilliger and I were law partners together at Summit  
24 Law Group, which I left almost ten years ago, at the beginning of  
25 2014. We did work on some matters together. The time range of

1 working together is around 10 to 15 years ago. That's a  
2 guesstimate. She is active in the local Federal Bar  
3 Association -- I think she's currently president -- and, last  
4 year, when I was a new judge on this court, she authored my  
5 profile in a Federal Bar Association publication.

6 I don't believe this connection will in any way affect my  
7 ability to be fair and impartial, but I thought that it's  
8 something that counsel might want to know, so I'm sharing it with  
9 you.

10 So my question for you now is, are there any concerns? I  
11 will start with the plaintiff.

12 MR. TAKASHIMA: Thank you, Your Honor. For the FTC, we  
13 have no concerns.

14 MS. HUBBARD: Your Honor --

15 THE COURT: Mr. Smith?

16 MS. HUBBARD: Oh, sorry.

17 MR. SMITH: Thank you, Your Honor.

18 For the State of Oregon and the plaintiff states, no  
19 concerns, Your Honor.

20 THE COURT: Ms. Hubbard?

21 MS. HUBBARD: Thank you, Your Honor. Heidi Hubbard for  
22 Amazon. And Molly, Ms. Terwilliger, is actually on the phone  
23 with me. And so, as you might imagine, we have no concerns.

24 THE COURT: Okay. Very good. I'm sorry that I had to  
25 round you all up for such a short call, but I thought it was

1 important to make this disclosure.

2 That's all I have.

3 MR. TAKASHIMA: Very good, Judge.

4 MS. HUBBARD: Your Honor, Heidi --

5 THE COURT: Oh, we have some question?

6 MS. HUBBARD: Yes, I have one very quick question. And,  
7 I apologize; it's Heidi Hubbard for Amazon.

8 Yesterday, we filed a motion for a short extension of time to  
9 respond to the complaint -- it's Document No. 27 on the docket --  
10 and I just wanted to flag that for Your Honor because there is  
11 some time sensitivity to the request.

12 THE COURT: What date is it noted for?

13 MS. HUBBARD: I'm sorry, I lost you right there, "is  
14 it" --

15 THE COURT: What date is it noted for?

16 MS. HUBBARD: Oh.

17 THE COURT: It looks like it's noted for the 27th of  
18 October.

19 MS. HUBBARD: Yeah. Yes.

20 THE COURT: So if the court rules on it that day or the  
21 following week, will that be okay?

22 MS. HUBBARD: As long as the parties are in agreement  
23 that the plaintiffs will not say we have missed our response  
24 date. We had tried to reach agreement with the plaintiff on  
25 this, and things were unclear as of yesterday.

1 MR. TAKASHIMA: Your Honor --

2 THE COURT: Mr. Takashima?

3 MR. TAKASHIMA: -- this is Ed Takashima for the FTC.

4 If I can, let me summarize the issue for the court. We think  
5 there are two closely intertwined issues here. One is what  
6 Amazon has raised, which is the briefing schedule for its motion  
7 to dismiss; the other is whether this case, and when this case,  
8 can move forward in discovery, a Rule 26(f) conference, and a  
9 case management order.

10 Amazon came to us and asked for, I believe, 74 days,  
11 initially, from service of the complaint to their initial motion.  
12 That seemed rather extended. We told Amazon we were willing  
13 that if we can move the case forward and set dates for the  
14 beginning of discovery, the Rule 26(f) process, we would be  
15 willing to go along with their schedule. Amazon wasn't willing  
16 to commit to starting discovery or the Rule 26(f) process, and so  
17 we offered a second proposal, which was six weeks from the  
18 beginning of service till their motion. Amazon felt it was  
19 insufficient and went ahead and filed their motion yesterday.  
20 The current deadline is this upcoming Thursday.

21 So I think it would help, honestly, if the court could give  
22 us some guidance about starting the discovery process and the  
23 Rule 26(f) papers. That, I think, is a gaping issue for us. I'm  
24 happy to talk about that more, but I don't want to belabor my  
25 point.

1 THE COURT: Well, I am not prepared to discuss this  
2 issue because I haven't read this motion that you have talked to  
3 me about.

4 If it would help the parties for me to just say, I want you  
5 to suspend all this until I rule on this particular motion, I'm  
6 happy to do that.

7 MS. HUBBARD: That would be very helpful, Your Honor.  
8 Heidi Hubbard for Amazon. It's just that Thursday deadline issue  
9 that forced me to bring it up on this call.

10 THE COURT: Mr. Takashima?

11 MR. TAKASHIMA: That's fine, Your Honor.

12 So if the noting -- my understanding is that the noting date  
13 is -- well, let me suggest this. I understand the noting date is  
14 next Friday. I think we can get our opposition brief in before  
15 the end of the week. And if Amazon will waive its reply -- I  
16 think that this is a pretty simple matter -- the court can go  
17 ahead and rule on this.

18 THE COURT: Okay. And can Amazon waive its reply?

19 MS. HUBBARD: Your Honor, Heidi Hubbard, yes. I believe  
20 in efficiency and practicality, and it's a straightforward issue.  
21 We are asking for, really, basic courtesy from the plaintiffs,  
22 and, if not, relief from the court, for a little longer to  
23 respond to a 150-page complaint.

24 THE COURT: Okay. All right.

25 All right. Mr. Takashima, I will be looking forward to your

1     brief.

2                 MR. TAKASHIMA: We will get it in by the end of the  
3     week, Your Honor.

4                 THE COURT: Very good.

5                 Okay. Take care, counsel. We will be in recess.

6                 MS. HUBBARD: Thank you, Your Honor.

7                 MR. TAKASHIMA: Thank you, Your Honor.

8  
9                         (Adjourned.)

10                                 C E R T I F I C A T E

11  
12                 I, Nickoline M. Drury, RMR, CRR, Court Reporter for the  
13     United States District Court in the Western District of  
14     Washington at Seattle, do certify that the foregoing is a correct  
15     transcript, to the best of my ability, from the record of  
16     proceedings in the above-entitled matter.

17  
18  
19                                 /s/ Nickoline Drury

20                                 Nickoline Drury  
21  
22  
23  
24  
25